

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Donald E. Halla, et al,

Court File No. 15-cv-4115 (JRT/LIB)

Plaintiff,

v.

**REPORT AND RECOMMENDATION**

LikeZebra, LLC, et al.,

Defendants.

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This matter came before the undersigned United States Magistrate Judge upon the routine supervision of the cases that pend before the Court, pursuant to a general assignment made in accordance with the provisions of 28 U.S.C. 636(b)(1)(A).

Plaintiffs Donald E. Halla and Donald E. Halla Roth IRA (“Plaintiffs”) commenced the present action on or about November 13, 2015, naming as Defendants LikeZebra, LLC, Keith Phillips, Craig Rickard, and Kim Ricketts. (Compl. [Docket No. 1]). Defendant LikeZebra, LLC, was served, and the deadlines by which Defendant LikeZebra, LLC, was to have answered or otherwise responded to Plaintiff’s Complaint came and went.<sup>1</sup>

On April 5, 2016, when no answer or other responsive pleading had yet been filed by Defendant LikeZebra, LLC, the Court issued an order instructing Plaintiff to notify Defendant LikeZebra, LLC, that it is required to make an appearance or move for an extension of time to do so; to file an application for entry of default against Defendant LikeZebra, LLC, unless the required pleading was filed within five days of Plaintiff informing Defendant LikeZebra, LLC, of its obligation to file a responsive pleading; or advise the Court in writing of any good cause

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<sup>1</sup> Defendant Ricketts was served and has filed an Answer. [Docket No. 7]. Plaintiffs have been granted an extension of time until May 20, 2016, to provide proof of service upon Defendant Phillips and Defendant Rickard. (April 20, 2016, Order, [Docket No. 16]).

for not doing so. (April 5, 2016, Order [Docket No. 12], 1-2). The Court further instructed Plaintiffs that unless they complied with the Order within 20 days of its date of issuance, the Plaintiffs' claims against Defendant LikeZebra, LLC, would be dismissed for failure to prosecute. (Id. at 2).

On April 15, 2016, the Plaintiffs filed a Letter, [Docket No. 15], in which they, in pertinent part, represented that they had notified Defendant LikeZebra, LLC, of its obligation to file a responsive pleading. (Letter, [Docket No. 15], 1). The Plaintiffs also represented they intended to file an application for default against Defendant LikeZebra, LLC. (Id. at 2).

It has now been more than twenty (20) days since the Court's April 5, 2016, Order, [Docket No. 12], and Defendant LikeZebra, LLC, has not yet answered or otherwise appeared in the present case. Nor have Plaintiffs filed an application for entry of default against Defendant LikeZebra, LLC, or have Plaintiffs advised the Court of any good cause for such failure.

Consequently, the Court finds that, with regard to Defendant LikeZebra, LLC, Plaintiffs have failed to abide by the terms of the Court's Order of April 5, 2016, [Docket No. 12]. Because the Court forewarned Plaintiff of the potential consequences of its failure to abide by the Court's order, the Court recommends that, as to Defendant LikeZebra, LLC, this action be dismissed for failure to comply with the Court's April 5, 2016, Order, [Docket No. 12], and for lack of prosecution.

Based on the foregoing and all of the files, records and proceedings herein, **IT IS HEREBY RECOMMENDED:**

That Defendant LikeZebra, LLC, be **DISMISSED without prejudice** from this action, for Plaintiff's failure to comply with the Court's Order of April 16, 2016, [Docket No. 12], and

for lack of prosecution.

Dated: May 6, 2016

/s/ Leo I. Brisbois

Leo I. Brisbois

U.S. MAGISTRATE JUDGE

### NOTICE

**Filing Objections:** This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “A party may file and serve specific written objections to a magistrate judge’s proposed findings and recommendation within 14 days after being served with a copy of the recommended disposition[.]” A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in LR 72.2(c).

**Under Advisement Date:** This Report and Recommendation will be considered under advisement 14 days from the date of its filing. If timely objections are filed, this Report and Recommendation will be considered under advisement from the earlier of: (1) 14 days after the objections are filed; or (2) from the date a timely response is filed.